

Montana Water Well Drillers Association
Proposal for Changes to Exempt Well Law
Presented to the Water Policy Interim Committee
January 10, 2011

MWWDA begins by asking that any changes to the exempt well law apply only to closed basins. As the discussion has indicated that the potential problems are located in high growth areas that are in closed basins, we feel that any proposed solutions should apply only to these areas. Water availability is very different in different areas of our state and many changes that may work in one area, may not only not work in another, they may add expensive and unnecessary complications to accessing ground water.

We understand that this committee is placed in a position where they must address some changes to this law; we continue to ask that these changes be based on science rather than emotion. The Montana Bureau of Mines is doing excellent research on groundwater in both their Assessment and Investigation Programs. We hope that the legislature uses this information in their decision making.

MWWDA is not opposed to limiting the amount of lawn and garden that can be watered on an exempt well. However, we would again ask that this only apply in closed basins and that when determining the limits, the committee also consider defensible space for fire protection and issues concerning weed infestation on ground that has limited water availability.

Although MWWDA does not necessarily object to lowering the total acre feet available for an exempt well, we recognize that a lower amount would be sufficient for domestic use but would likely not be sufficient for livestock. As we do not encourage anything that would give different uses of water a priority over other uses, we assume that this blanket change in acre feet does not work for everyone involved. However, we feel that our proposal may offer a solution to this that does work.

The Montana Water Well Drillers Association would like to see WPIC consider the difference in wells that access confined aquifers verses those that access unconfined aquifers.

These aquifers are identifiable and legally defined in ARM 36.21.634. Paragraph 4 defines an aquifer and paragraph 14 defines a confining formation. Basically, an unconfined aquifer is more likely to be directly connected to surface water. A confined aquifer, by definition, is not directly connected.

By placing a lower limit on the amount of acre feet allowed to be used by an exempt well in an unconfined aquifer within a closed basin, you would limit the potential for an exempt well to affect senior surface water rights.

This is something that the well driller can determine at the time of drilling the well and is what truly makes a difference in how the use of ground water affects senior water rights. While we acknowledge that all water is connected in some manner, when in a confined aquifer, it is being replenished from a source not directly attached to the local surface water. Use of ground water from a confined aquifer does not have the same effect on surface water as that same use from an unconfined aquifer.

If you were to limit the consumption in unconfined aquifers within closed basins to 5 acre feet per year, it would cut the potential impact to senior water rights in half.

However, under this proposal, if a rancher – or anyone else for that matter – determined that they did indeed need to have the 10 acre feet per year, they would need to drill a well deep enough that they would be accessing a confined aquifer.

The depth and availability of confined aquifers does differ throughout the state and is one of the reasons we ask that this proposal be limited to only closed basins.

Finally, in closing, we would like to add that MWWDA is opposed to any suggestion that implements water banking or fees on exempt wells designed for a third party to purchase offset water.

36.21.634 DEFINITIONS

For purposes of this chapter, the following terms shall apply.

(4) "Aquifer" means any geological formation which is capable of yielding water or is capable of recharge.

(a) Any discrete water bearing unit with a specific water chemistry, temperature, or hydrostatic head shall be considered a separate aquifer.

(5) "Artesian well" means a well in which the water level rises above the point at which it was first encountered. This term includes both flowing and non-flowing wells.

(14) "Confining formation" means a body of impermeable or distinctly less permeable material adjacent to one or more aquifers.

(15) "Consolidated formation" means any geologic formation in which the earth materials have become firm and coherent through natural rock forming processes, including, but is not limited to basalt, granite, sandstone, shale, conglomerate, and limestone.

(38) "Unconsolidated formation" means naturally occurring, noncemented materials including, but not limited to clay, sand, silt, and gravel.